



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/666,371	09/20/2000	Davi Geiger	24147.00	6163

30873 7590 12/14/2005

DORSEY & WHITNEY LLP
INTELLECTUAL PROPERTY DEPARTMENT
250 PARK AVENUE
NEW YORK, NY 10177

EXAMINER

ABDULSELAM, ABBAS I

ART UNIT PAPER NUMBER

2677

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/666,371	Applicant(s) GEIGER ET AL.	
	Examiner Abbas I. Abdulsalam	Art Unit 2677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-29,31-33,35,37,41 and 42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-29,31-33,35,37,41 and 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>02/22/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to a communication filed on 07/14/05. Claims 15-29, 31-33, 35, 37, 41-42 are pending. Applicant cancels claims 1-14, 34, 36 and 38-40, and provisionally elect group II, claims 15-29, 31-33, 35, 37, 41 and 42.

Response to Arguments

2. Applicant's argument with respect to a restriction requirement is moot since the applicant has canceled claims 1-14, 34, 36 and 38-40.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 15-29, 31-33, 35, 37 and 41-42 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 15-21 and 24-

Art Unit: 2677

37 of copending Application No. 11/035711. Although the conflicting claims are not identical, they are not patentably distinct from each other because

Claim 15 of the present application is met by claims 15 and 30 of the copending application. It would have been obvious that “first point and second point in the space” as used in the current application corresponds to and is patently indistinct from “first point and second point in three dimensional space” as used in the copending application.

Claim 20 of the present application is met by claims 15 and 20 of the copending application. It would have been obvious that “first point and second point in the space” as used in the current application corresponds to and is patently indistinct from “first point and second point in three dimensional space” as used in the copending application.

Claim 22 of the present application is met by claims 15, 17 and 26 of the copending application. It would have been obvious that “first point and second point in the space” as used in the current application corresponds to and is patently indistinct from “first point and second point in three dimensional space” as used in the copending application.

Claim 23 of the present application is met by claims 15, 17 and 26 of the copending application. It would have been obvious that “first point and second point in the space” as used in the current application corresponds to and is patently indistinct from “first point and second point in three dimensional space” as used in the copending application.

Claim 26 of the present application is met by claims 15, 17 and 26 of the copending application. It would have been obvious that “first point and second point in the space” as used in the current application corresponds to and is patently indistinct from “first point and second point in three dimensional space” as used in the copending application.

Claim 31 of the present application is met by claims 15 and 31 of the copending application. It would have been obvious that “first point and second point in the space” as used in the current application corresponds to and is patently indistinct from “first point and second point in three dimensional space” as used in the copending application.

Claim 33 of the present application is met by claims 15 and 33 of the copending application. It would have been obvious that “first point and second point in the space” as used in the current application corresponds to and is patently indistinct from “first point and second point in three dimensional space” as used in the copending application.

Claim 35 of the present application is met by claims 34-35 of the copending application. It would have been obvious that “first point and second point in the space” as used in the current application corresponds to and is patently indistinct from “first point and second point in three dimensional space” as used in the copending application.

Claim 37 of the present application is met by claims 36-37 of the copending application. It would have been obvious that “first point and second point in the space” as used in the current application corresponds to and is patently indistinct from “first point and second point in three dimensional space” as used in the copending application.

Claim 41 of the present application is met by claims 34-35 of the copending application. It would have been obvious that “first point and second point in the space” as used in the current application corresponds to and is patently indistinct from “first point and second point in three dimensional space” as used in the copending application.

Claim 42 of the present application is met by claims 36-37 of the copending application. It would have been obvious that “first point and second point in the space” as used in the current

Art Unit: 2677

application corresponds to and is patently indistinct from “first point and second point in three dimensional space” as used in the copending application.

Claims 16-19 of the present application are met by claims 16-19, respectively of the copending application.

Claim 21 of the present application is met by claim 21 of the copending application.

Claims 24-25 of the present application are met by claims 24-25, respectively of the copending application.

Claims 27-29 of the present application are met by claims 27-29, respectively of the copending application.

Claim 32 of the present application is met by claim 32 of the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Abbas I. Abdulsalam whose telephone number is (571) 272-7685. The examiner can normally be reached on Monday through Friday from 9:00 A.M. to 5:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amr Awad can be reached on (571) 272-7764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

Art Unit: 2677

applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Abbas Abdulsalam

Examiner

Art Unit 2677

December 6, 2005

AMR A. AWAD
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read "Amr A. Awad", written over a horizontal line.